IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 376 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

DORAI KARPPAN KORI MADRASI

Appearance:

MR KC SHAH, ld.ADDL.PUBLIC PROSECUTOR for appellant

MR JM BUDDHBHATTI for Respondent

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 07/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

The respondent accused was charged under Sec.307 of the Indian Penal Code and Sec.135 of the Bombay Police Act, for causing injuries to his wife Laxmi. At the end of the trial, learned Addl. Sessions Judge, Rajkot, by his judgment and order dated 17.11.1992 convicted the respondent for the offences under Sec.307 of the Indian Penal Code and sentenced him to suffer Rigorous Imprisonment for two years and to pay a fine of Rs.100/-, in default, to undergo seven days' imprisonment. The respondent is also convicted for the offence punishable under Sec.135 of the Bombay Police Act. However, no separate sentence was awarded. The State of Gujarat has filed this appeal for enhancement of sentence imposed upon the respondent by the trial Court.

2. The incident in question had taken place on 22.11.1991 at about 3.00 p.m. in the city of Rajkot when the wife of the respondent was sitting on the heap of earth near the site where the underground digging work was going on. At that time, the respondent came and started giving blows with knife on the person of his wife Laxmi. Laxmi received as many as 7-8 blows on her shoulder, back, abdomen etc. Laxmi saw the accused running away with blood stained kinfe. The injured was later on removed to the Civil Hospital, Rajkot. Dr.Bharat Trivedi, examined the injured and also recorded the case papers wherein also, the injured involved the respondent for the commission of the offence. The duty Constable in the Hospital also recorded the case history and made an entry at Exh.38 in the Register. In the meantime, the respondent was also apprehended by Head Constable Merubha Devabha Exh.25 with the blood stained knife, when the respondent was passing towards the Police Station on the road.

3. The prosecution examined, in all, 21 witnesses. However, most of the witnesses have turned hostile and have, thus, not supported the prosecution. However, on the basis of the evidence of injured Laxmi, Head Constable Merubha Devabha and the medical evidence, the learned trial Judge convicted the respondent for the offence for which he was charged and imposed sentence to suffer Rigorous Imprisonment for two years.

4. Learned Addl.Public Prosecutor, Mr.K.C. Shah submitted that in the instant case, the respondent used knife indiscriminately as a result of which, seven injuries have been caused to the injured. In the submission of the learned Addl.Public Prosecutor, the trial Court has taken too lenient view in the matter by

imposing sentence of only two years and therefore, the appeal is required to be allowed. Mr.Bhuddhbhatti, learned Advocate for the respondents, while supporting the reasoning of the trial Court, submitted that the discretion is properly exercised in the instant case and therefore, interference in the matter is not called for.

5. We have gone through the oral evidence of the material witnesses in the instant case. It is not in dispute that the marriage between the respondent and Laxmi had taken place three years prior to the date of incident. It has come in evidence that the marriage had taken place against the will of Laxmi as she was in love with one Kolenji. It has also come in evidence that she was in fact residing with Kolenji 11 months prior to the incident. According to the evidence of Laxmi, the respondent attacked her with a view to take revenge. It appears that the evidence of Laxmi was recorded on 20th July 1992. She in her examination in chief as well as in cross examination, involved the respondent for committing the offence. The case was adjourned for further cross examination thereafter. It was only on 7.10.1992 the cross examination of Laxmi was completed. It appears that during the intervening period, i.e. from 20th July 1992 to 7.10.1992, Laxmi was persuaded not to involve the respondent in the commission of the offence. She, therefore, changed her entire version in the further cross-examination and completely exonerated the respondent. Thus, she changed her earlier version in the cross examination. Her evidence may not be worth of the record altogether, but the same is required to be accepted to the extent it is found to be dependable. In the instant case, we find that her version is supported with the medical evidence, in the case history given by her at the earliest point of time also when she involved the the respondent. There is no reason to doubt the evidence of Head Constable Merubha who caught hold of the accused with the blood stained knife near the police station. The cumulative effect of the aforesaid will lead no room to doubt the prosecution case. We, therefore, see no exception to be taken in the ultimate conclusion recorded by the learned trial Judge convicting the respondent for the offence under Sec.307 of the Indian Penal Code. Suffice it to say that, we are in complete agreement with the reasoning and the ultimate conclusion recorded by the learned trial Judge. We therefore, confirm the the conviction and sentence recorded against the respondent by the learned trial Judge.

6. The only question requires to be decided in the

present appeal is about the adequacy of the sentence imposed by the learned trial Judge. The learned Judge was overwhelmed with the fact that Laxmi was not faithful to the respondent and therefore, the respondent has taken the extreme step of committing murder. The learned trial Judge has also recorded the reasons that the respondent being a labourer and has come to Gujarat from another State and is having a small child of two years, a lenient view is required to be taken in the matter. After considering the aforesaid reasons, we are of the opinion that the appeal is required to be interfered as far as the sentence part is concerned. It has come in evidence that Laxmi, being unfaithful wife of the respondent, was residing with one Kolenji 11 months prior to the date of incident. The respondent for all this period has virtually accepted the separation and therefore, there was no reason for him to attack his wife on the day in question. The fact that he has inflicted as many as 7 blows on the person of his wife which goes to show that he had come with a pre-determined mind. The other reasons for lesser sentence have not impressed us. We are, therefore, of view that the sentence of two years appears to be quite disproportionate with the gravity of the offence. We are, therefore, of the opinion that the appeal for enhancement of sentence is required to be allowed.

7. The respondent was convicted on 17.11.1992 for the offence taken place on 22.11.1991. He has not preferred appeal challenging the conviction and sentence passed against him. By the time the appeal of the State was admitted on 24.9.1993, he has almost undergone the period of sentence imposed on him. After completing the sentence on 18.9.1993 this Court on 7.9.1994 passed an order issuing bailable warrant in sum of Rs.1500/= against the respondent. It appears that the said order was not implemented as the respondent was not traceable. It is only on 28.3.2000 that the respondent was arrested by the police and since he was not in a position to provide bail, he was detained in prison. In fact, the respondent was required to file an application being Criminal Misc. Application No.441 of 2001 requesting this Court for early hearing of the appeal, by contending that he is in prison and therefore, the early hearing of the appeal is necessary. This Court on 14.2.2001 directed the Registry of this Court to list the Criminal Appeal in the list of expedited appeals. This fact would go to show that the respondent has remained in jail from 28th March 2000 till date, i.e. for a period of more than 19 months. Considering the above facts, in our opinion, the ends of justice shall meet if we impose the

sentence already undergone by the respondent, i.e. from 28h March 2000 to 7th January 2002.

8. In the result, the following order is passed:

The Criminal Appeal preferred by the State is allowed. The judgment and order of conviction dated 17.11.1992 passed by the trial Court is confirmed and the sentence imposed upon the respondent is enhanced for a further period already undergone by the respondent, i.e. from 28th March 2000 to 7th January 2002, over and above the sentence imposed by the trial Court. The respondent is ordered to be set at liberty if not required for any other offence. Order accordingly.

(Kshitij R. Vyas, J.)

(Akshay H. Mehta, J.)

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL NO. 376 OF 1993

Coram: Kshitij R. Vyas & Akshay H. Mehta, JJ.
Dt.: 7th January 2002.

ORDER:
For the reasons recorded in the judgment, the Court passed the following order:

The Criminal Appeal preferred by the State is allowed. The judgment and order of conviction dated 17.11.1992 passed by the trial Court is confirmed and the sentence imposed upon the respondent is enhanced for a further period already undergone by the respondent, i.e. from 28th March 2000 to 7th January 2002, over and above the sentence imposed by the trial Court. The respondent is ordered to be set at liberty if not required for any other offence. Order accordingly.

Private Secretary